



December, 2000

Communiqué

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PRESIDENT'S REPORT

Western Law Societies Conveyancing Project



In my September Communiqué report, I commented on the co-operative efforts of the Law Societies of Western Canada in the areas of mobility and legal education. A third project involving all four Western Law Societies has been in the works for a number of years. I am now pleased to report that the work of the Western Law Societies Conveyancing Project has reached a stage where it can now be implemented. On February 15, 2001, the Western Law Societies Conveyancing Project will be implemented in Manitoba and across Western Canada.

In connection with this Project, our Law Society has developed a Real Estate Conveyancing Protocol for use by conveyancing practitioners in this province. The protocol contemplates a new and re-engineered conveyancing practice

which is designed to expedite the residential mortgage process for lenders, to ensure consumers have continued access to independent legal advice, and to preserve the integrity of the land title system and survey fabric in Manitoba and in the rest of Western Canada. The purpose of the Manitoba Real Estate Conveyancing Protocol is:

1. To allow for the release of mortgage proceeds and other purchase funds on closing, for the mutual

benefit of purchasers, vendors and mortgagees;

2. To encourage the continued exercise of due diligence by purchasers in survey matters; and,
3. To enable lawyers to satisfy the unique security requirements of mortgagees without obtaining a current building location certificate.

On December 15, 2000, the Benchers of the Law Society of Manitoba approved a new practice direction which adopts the Protocol and permits real estate practice in accordance with the Protocol. Seminars have now been planned for conveyancing lawyers in Brandon (January 26, 2001), in Winnipeg (February 7, 2001) and on a tentative basis for one northern location shortly thereafter. The object of the seminars will be to empower lawyers to carry out the new program and in the process educate their clients (purchasers, vendors and bankers) as to the new processes and the benefits which are derived therefrom. A significant amount of effort has been, and will continue to be, expended in informing the stake holders in this process (including most importantly mortgage lenders) about the benefits of the new program. Practitioners who have been involved in the development of the program are currently being recruited to assist in the process and act as advisors to lawyers during the transition period.

You should know that in the course of the development of this Project, our insurer (The Canadian Lawyers Insurance Association) and the actuaries which provide advice to our Law Society have been integrally involved in the process. The insurer and our actuaries have approved the new Protocol and the practice which it describes. On the basis of their review (and obviously without the benefit of any actual experience of lawyers operating under the new Protocol) no increases in insurance premiums are anticipated.

It is my view that the development of this Project is of significance to the profession as a whole (not only to conveyancing lawyers). The development and roll out of the Western Law Societies Conveyancing Project is an example of, and sets a precedent for, the value of cooperation between Law Societies. The combined resources of all four Western Law Societies have made possible the development of a project which otherwise could not be done. Although all four Western provinces have a similar public title registration and information system, the conveyancing practice in each of the provinces has developed and evolved over time in distinctive ways. Notwithstanding these differences, we have managed to identify common goals and find ways of achieving those goals.

In addition to finding ways of acting cooperatively, this Project is an example of the very important and effective role our Law Society can play in facilitating and enhancing the ability of our members to provide a valuable service to the public. This Project and its implementation is consistent with the mandate of the Law Society of Manitoba that the public be well served by an honourable, competent and independent legal profession.

It is important to note that the staff at the Law Society of Manitoba; Marilyn Billinkoff, Tana Christianson and Kate Craton, have been at the forefront of the development of the Western Law Societies Conveyancing Project. Without Manitoba's lead and the staff at our Law Society taking that lead, this project would not be where it is today. I thank each of them for their outstanding work.

If you have any questions about the Western Law Societies Conveyancing Project and its implementation, please do not hesitate to contact either me directly or the staff at the Law Society.

Past Presidents Dinner

On December 4, 2000 a dinner was held for all Past Presidents of the Law Society. Twenty-five of the twenty-seven Past Presidents still living were able to attend. The two discussion topics were multi-disciplinary partnerships and mobility. They also got to play a "survivor" game with Past Presidents being voted out of the "hall of fame" based on infamous events that happened on their watch. Lorne Campbell was the survivor.



Back Row (L to R): Harold Stubbs (Secretary 1958-1980), Justice Al MacInnes (1988-89), Lorne Campbell Q.C. (1966-67), Knox Foster Q.C. (1982-83), John Neufeld Q.C. (1996-97), Herb Peters (Current President), Bill Olson Q.C. (1985-86), Martin Freedman Q.C. (1978-79), Jack Chapman Q.C. (1987-88), Tim Killeen (Current Vice-President).

Middle Row (L to R): Marilyn Billinkoff (Deputy CEO), John Scurfield Q.C. (1989-90), Justice Don Little (1991-92), Doug Finkbeiner Q.C. (1998-99), Bjorn Christianson Q.C. (1999-2000), Colin MacArthur Q.C. (1990-91), Doug Abra Q.C. (1993-94), Judge John Guy (1984-85), Richard Deeley Q.C. (1994-95), Justice Vern Simonsen (1973-74), Ryan Sasaki (Comptroller).

Front Row (L to R): Alan Sweatman Q.C. (1974-75), Justice Barbara Hamilton (1992-93), Allan Fineblit (CEO), Justice Laurie Allen (1995-96), Harold Buchwald Q.C. (1975-76), Colleen Suche Q.C. (1997-98), Chief Justice Richard Scott (1983-84), Justice Perry Schulman (1979-80), Justice Jack Duncan (1980-81), Justice Peter Morse (1972-73).

[Unable to attend were Don St. John Q.C. (1970-71) and Don Baizley Q.C. (1986-87). Missing from the photo is Justice Deborah McCawley (CEO 1988-97)]

Benchers' Meeting Highlights

The Benchers of the Law Society met on December 14, 2000. Here is what happened.

- Honourary Member Certificates were awarded to The Honourable Archie Dewar, The Honourable Alfred Monnin, The Honourable Douglas Everett, Thaddeus Charne, Q.C. and George Saunders.
- A discussion paper was considered on the pros and cons of allowing Discipline Panels to award costs against the Law Society. A motion to allow the awarding of costs against the Society was defeated.
- Benchers approved Rule changes to create a new informal way of resolving quality of service complaints. (See the article below for details.)
- New Practice Directions and Rules to implement the Western Law Societies Conveyancing Project were approved. Rule 154(a) was amended to allow members to pay a real estate commission in a timely way consistent with the Protocol. Practice Direction 89-03 was amended and a new Practice Direction 00-02 was approved setting out how Protocol closings will operate. Practice Direction 98-01 was repealed. All of this is to be effective as of February 15, 2001.

After their meeting, the Benchers held a joint meeting with the Manitoba Bar Council. The agenda included: professional corporations, limited liability partnerships, The Lawyers Assistance Program, the new Conveyancing Protocol, The Mentorship Program and Continuing Legal Education.

Notice Of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, February 15, 2001 at 12:30 p.m.** in the Society's Classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Society to Resolve More Complaints Informally

Darcia Senft
Director of Discipline

The Society wants to expand the range of informal processes that are used to resolve less serious complaint matters. A new process has been put into place that will involve an initial referral to a designated member in the firm (or to the member directly where he/she is a sole practitioner.) The firm will be given a chance to resolve the matter before it enters the "complaints investigation" stream. Complainants will be advised that the firm has been asked to try to resolve the concerns on an informal basis within 21 days—failing which the matter will be handled in the normal fashion.

We believe that the referral process will give firms an opportunity to repair client relationships and to provide better client service. We also believe that it will help us to reach our goal to resolve complaints faster - to the benefit of complainants and members.

At least initially, the process will be used when there is a complaint that raises concerns about quality of service such as failure to return phone calls, failure to keep the client informed, delay, or even fee disputes. There will be opportunities to use the process whether the complaint is about current counsel, or former counsel.

Firms are required to give the Society the names of those who are designated to receive letters about complaint matters or insurance matters. Some firms choose to give the name of one lawyer for receiving complaint correspondence and another lawyer for receiving insurance correspondence. If a firm has not provided a name and there is correspondence to send out, we tend to choose the next most senior member of the firm.

If your firm has not yet designated a member to receive mail from the Society, it would be a good idea to choose someone for that purpose - especially in light of the new informal resolution referral process. If you have any questions or comments about the new process, please feel free to contact Darcia Senft, Director of Discipline. The Discipline Department is considering other methods of complaint resolution and suggestions are always appreciated.

Protect Your Firm From In-House Theft

Innovative New Product Insures Against Employee and Partner Fraud

By Peter Leipsic

We have had a number of inquiries about insurance and reimbursement coverage for employee theft. Some of you were alarmed by media reports about a large theft by an employee of a Winnipeg law firm. There have also been several smaller incidents that were not reported in the media. We asked Peter Leipsic of Leipsic Insurance to write an article about the risks and the insurance options available. The Law Society does not endorse any product or any particular supplier.

Although most business owners, including the partners of a law firm, carry insurance protection against physical disasters, break-ins, and other threats to property, most never consider that the greatest potential for loss may exist within the company itself: Employee Fraud. Even more distressing than the possibility of an employee defrauding your firm is the fact that such a fraud may already exist. In fact, despite internal "audits" by a firm, it is often the case that the fraud or theft goes undetected for months or even years,

building the loss to significant proportions, and resulting in substantial monetary resources being drained from the partnership.

Unfortunately, a firm or partnership that has been the victim of employee or partner fraud cannot seek redress from the Law Society of Manitoba. The mandate of that body does not extend to protecting a firm's assets from employee or partner fraud. The Law Society protects client funds, with the ability to make those clients whole in the face of a fraudulent act. The hard-earned assets of a firm simply fall outside the Law Society's mandate of protection.

The effect on a law firm victimized by fraud is significant. A firm's reputation is a key to success, and negative publicity from a loss due to employee theft or worse, partner fraud, can erode client confidence to the point where clients move their business elsewhere. However, reputation alone is not the only thing that suffers. A substantial financial loss resulting from employee or partner fraud will, if appropriate insurance is not in place, result in a substantial drain to the firm's cash reserves, can affect the firm's credit worthiness, and even result in the firm's financial impairment.

Four areas of potential loss are noted below, together with an indication of whether the financial loss is insured by either the Law Society Plan, or insurance as provided by traditional insurance companies.

Lawyer stealing client funds from Trust Accounts

- Protection provided by Law Society

Lawyer or Partner stealing firm's funds

- Protection not provided by Law Society and not covered by traditional fidelity insurance

Employee stealing from Trust Accounts

- Protection not provided by Law Society and not covered by traditional fidelity insurance

Employee stealing firm's funds

- Traditional insurance is available but expensive when requesting high limits
- It is noted that two areas of significant uninsured exposures are items 2 and 3.
- Leipsic Insurance and London Guarantee offer a product to cover the gap that now exists in available coverage: A fidelity bond that provides coverage for all employees and lawyers, covering all funds including the firm's funds.

For more information on anything in this article, please contact Peter Leipsic at 988-4882 or by e-mail at leipsic@horizongroup.mb.ca.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Non-Practising to Practising:

December 1, 2000 H. Mark LaClare

December 6, 2000 Julie M. Frederickson

Practising to Non-Practising:

August 1, 2000 Allan F. James, Q.C.

October 16, 2000 Dominique J. Alford

November 8, 2000 Leo V. Teillet

November 25, 2000 Jill R. Begin

December 1, 2000 Evelyn M. Braun

Practising to Inactive:

November 1, 2000 Robert L.T. McDonald

November 20, 2000 Marcia T. Zlotnick

December 1, 2000 William C. Middleton, Q.C.
December 31, 2000 Eva Dragun

Inactive to Practising:

November 10, 2000 Sean Kocsis
December 1, 2000 David J. Flett

Notice to the Profession: Life Leases and Consequential Amendments Act

C. Kristen Dangerfield
General Counsel

The *Life Leases and Consequential Amendments Act* received Royal assent on June 26, 1998 and was proclaimed on December 1, 1999. The *Act* is designed to regulate the concept of a life lease, which is a hybrid of an ordinary residential tenancy and condominium ownership. A tenant under a life lease receives a long term lease in exchange for a contribution towards the capital cost of the rental unit. The landlord may use such contributions to purchase land and construct the residential complex.

The *Act* allows a landlord to receive from a tenant an "entrance fee" or a "pre-lease payment" in respect of a life lease. An "entrance fee" is defined under the *Act* as an amount payable in respect of the rental unit to the landlord or trustee. This includes pre-lease payments, which generally are what the tenant pays as a deposit and commitment to enter into a life lease with the landlord once a proposed residential complex is completed.

Under section 19(1) of the *Act* a trustee shall be appointed by the landlord to receive and administer the entrance fees paid in respect of the complex. Typically the funds are retained for a period as short as two or three months, but not more than twelve to eighteen months.

Section 19(2) of the *Act* requires the landlord to appoint a trustee to administer a refund fund, to secure the landlord's obligations to refund entrance fees. The *Act* specifies that a portion of the entrance fee is to be refundable by the landlord. Typically, entitlement to the refundable portion of the entrance fee arises only upon termination of the lease. By definition, the amounts held by a trustee in a refund fund will be retained for a significantly longer period of time than in the case of entrance fees held under section 19 (1) of the *Act*.

Prior to the legislation being proclaimed, Manitoba Civil Legal Services consulted with the Law Society of Manitoba. The Practice and Ethics Committee expressed concerns at the time that a member acting as a section 19(2) trustee might not be acting in his or her professional capacity as a lawyer, and would therefore not likely be entitled to coverage under the Society's Professional Liability Claims Fund or the Reimbursement Fund. Accordingly, Regulation 143/99 was enacted by the Province with a view to restricting lawyers to acting *only* as section 19(1) trustees. The section 19(2) refund fund is to be administered by a trust corporation.

Members are reminded therefore that while they may act as a section 19(1) trustee where they are also "providing legal services to a landlord in respect of the development of a residential complex", they are not qualified to act as a trustee under section 19(2) of the *Act*.

Outstanding Interest On Client Accounts

Pursuant to Section 47 of *The Law Society Act*, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the

Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period January 1, 2001 to March 31, 2001 is 10%.

In Memoriam

George Chapman Parkin who passed away on November 25, 2000 at the age of 75. Mr. Parkin was called to the Bar on August 17, 1950. He enjoyed a lengthy career employed by the government as a Justice of the Peace, Magistrate, Clerk of the Court, Chief Clerk of the Court and after retirement, a part-time circuit court judge. Mr. Parkin moved from Winnipeg to Sperling, Manitoba in 1990, where he resided until his death.

Peter Thor Guttormsson who passed away on December 13, 2000 at the age of 72. Mr. Guttormsson was called to the Bar on December 5, 1956. Mr. Guttormsson began his career in private practice under the firm name "Stapley & Guttormsson. In September, 1972 Mr. Guttormsson was appointed Administrator of Court Services for the Province of Manitoba and later for the Province of Saskatchewan. In 1987, Mr. Guttormsson returned to private practice in Manitoba. He retired in Ste. Anne, Manitoba in 1991.

How Am I Doing On Loss Prevention?

(A Self-Assessment Check List)

Barry Vogel, Q.C., The Law Society of Alberta's Practice Advisor and Chair of CLIA's Loss Prevention Committee, prepared a checklist to help you learn how you and your firm rate in the critical area of loss prevention. The questions in the checklist relate to your day-to-day practice. It will be well worth your while to take the time to respond to each of them. You will thereby learn how you and your firm rate in the critical area of loss prevention.

Just because you are unable to answer "yes" to every question does not mean that you and your firm are guilty of sub-standard practices. The questions are not intended to, nor do they define standards. However, the information that results will be most useful as a basis for developing firm procedures, an office manual, or a more specialized form of check list designed to address policies and systems that will reduce the risk of claims. It is hoped that, with that in mind, you will find the exercise helpful.

[CLICK HERE TO VIEW OR DOWNLOAD THE CHECKLIST.](#)

The Year in Review

Allan Fineblit, Q.C.
Chief Executive Officer

Happy 2001. Fess up, have you eaten all those cans of tuna you stockpiled for when we were supposed to be freezing in the dark? We did have kind of a millennium bug, not a computer virus type, but a nostalgia bug. Ryan Sasaki celebrated (??) 25 years at the Law Society this year. We had a dinner honouring 12 lawyers who practised for a total of 656 years. We did videotape interviews with seven senior lawyers about their lives and practices. We had a "reunion" of 25 Past Presidents of the Law Society. John McFarlane retired as "Dean" of our Audit Department after 13 years in his second career. Patti Sullivan gave up her appointment as Lay Benchers after seven years in that position. Barney Christianson, Wolf Riedel, Lewis Wasel and Heather Leonoff all became Life Benchers after eight years of hard work. What can I say ... I love the past. The more I hear about our amazing history, the more fascinated by it I become. So thanks to all of you who sent me stories and memorabilia and who participated in the events marking this remarkable year.

In spite of all that sentimentality, year 2000 at the Law Society was really about the future of practising law in Manitoba. We took on the major challenges of technology, maintaining competence, mobility, and non-lawyers who threatened to put the public at risk by practising law without the protective infrastructure of training, licensing, standards and insurance that are mandatory for every lawyer.

Consider these developments:

- We are part of a new corporation, CANLII, that will bring you desktop access to all primary (cases and statutes) Canadian legal materials;
- We joined other Canadian Law Societies in a new initiative, Juricert, to provide electronic credentialling to Manitoba lawyers;
- Increased mobility among Western Law Societies will facilitate new practice opportunities for Manitoba lawyers;
- We adopted a working definition of competence (which has been identified as a major concern of the profession);
- We developed a Mentoring Program in partnership with the MBA to provide support for new lawyers;
- We developed a Western Canadian Conveyancing Protocol that will modernize real estate practice and enable real estate practitioners to keep their competitive edge;
- New legislation now permits lawyers to incorporate their practices.

... and we have lots in the works: limited liability partnerships, new streamlined *Act* and *Rules*, and a better lawyer assistance program are all coming.

I enjoy my job, my co-workers, the Benchers and the contact I have with the legal profession. You are a friendly and generous lot.

Have a good year!

Happy New Year To...

Robbie Gabor, Grant "I'll be back" Mitchell, Rob Finlayson, Gord Hannon on the picket line, Jeff Harris, Harold and Richard Buchwald, e-mail spam king Aaron Berg, Diane Bourque, Barney "Winchester" Christianson, John Wiens, Rob Dewar, sushi maven Bill Pope, Jeff Schnoor, Knox Foster, Doug Bedford (he who toils on my behalf in obscurity), Trevor Anderson, Tom Frohlinger, Jim Hedley, Remi Smith, David Gisser, Abe Feinstein, Dale Schille, Don Ernst, Ron Perozzo, Lorne Campbell (who now owns a singing fish), Murray Thompson, Bill Malcolm, Tom Hague, Fiona Duncalf, Leo Teillet, Lyle Smordin (who has been teaching Bar Ad for 32 years), Sladen Adleman, Terry Beley, Michael Lazar, Dave and Paul Brett, Doug Finkbeiner, Barry Roy, Lindy Choy, Joy Cooper, Melinda Murray, Ted Crane, the four Barrys: Steinfeld, Krawchuk, Gorlick and Sinder, and to Tim Valgardson, Don Douglas, Stu Whitley, Beth Eva, Parker Fillmore, my occasional golf foursome: Ian Garber, David Perlov and Saul Simmonds, Ken Halprin, Ernie Shewchuk, Diane Jones, Reeh Taylor, Bruce King, Howard Morry, Bryan Klein, Shane Lasker, the mother of "Nathan Detroit" Ellen Leibl, Dianna Scarth, Richard Leipsic, Dan Nelko, Chris Martin, Lavonne Ross, Jim McLandress, Jack Montgomery, Mel Myers (thanks for the statuery), Walter and Paul Saranchuk, Grant "elbows" Nerbas, Jim Parrott, Pat Bourbonnais, Shirley Strutt, Vivian Rachlis, David "iron man" Shrom and the other 1,700 of you who every day go to work, do your jobs well, serving your clients and your communities.

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